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|--|---|--------------------------|
| <b>DAVID LANKFORD</b>                  | ) |                          |
| <b>Plaintiff;</b>                      | ) | <b>CIVIL ACTION NO.:</b> |
|  | ) | <hr/>                    |
| <b>v.</b>                              | ) |                          |
|  | ) |                          |
| <b>FOUNDATION ONE, BENEFIT</b>         | ) |                          |
| <b>PLANNERS, &amp; VALLEY SERVICES</b> | ) |                          |
| <b>Defendants.</b>                     | ) |                          |

To the extent that Plaintiff has sustained any damages recoverable in this action, he has failed to mitigate the consequences of the damages or harm of which he complains.

**FIFTH DEFENSE**

Plaintiff is entitled to no medical benefits under the terms of the Plan.

**SIXTH DEFENSE**

Any and all state law claims are preempted by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1001 et seq.

**SEVENTH DEFENSE**

As a matter of law, under ERISA Plaintiff cannot recover extra-contractual damages, including compensatory and punitive damages.

**EIGHTH DEFENSE**

Health benefits under the Plan covering employees in Plaintiff's job classification were underwritten and insured by American Fidelity Assurance Company and Valley has no liability for paying health benefits.

**NINTH DEFENSE**

Plaintiff has failed to exhaust his administrative remedies.

**TENTH DEFENSE**

Plaintiff's state law claims, to the extent not preempted by ERISA, are barred by the statute of limitations.

**ELEVENTH DEFENSE**

Defendant denies any willful, wanton, malicious, intentional, reckless or other acts or omissions which might entitled Plaintiff to punitive damages.

**TWELFTH DEFENSE AND ANSWER TO  
THE ALLEGATIONS OF THE COMPLAINT**

Valley reserves the right to articulate additional defenses of which it may become aware during the course of the litigation.

Answering the separately numbered paragraphs of the Complaint, Valley states:

**Count I - Benefits**

1. Valley admits that the Foundation One Security Plan is underwritten and insured by American Fidelity Assurance Company and that Benefit Planners acts as third party administrator for the Foundation One Security Plan and denies the remaining allegations of Paragraph 1 of Count I of the Complaint.

2. Valley, for lack of information sufficient to justify a belief, denies the allegations of Paragraph 2 of Count I of the Complaint.

3. Valley, for lack of information sufficient to justify a belief, denies the allegations of Paragraph 3 of Count I of the Complaint.

4. Valley, for lack of information sufficient to justify a belief, denies the allegations of Paragraph 4 of Count I of the Complaint.

Valley denies each and every allegation contained in Count I of the Complaint which is not specifically admitted above and denies that Plaintiff is entitled to any relief requested related to Count I of the Complaint.

**Count II - Fraud**

1. Valley answers the allegations re-alleged and incorporated by reference into Paragraph 1 of Count II of the Complaint in accordance with its answers to the allegations of Paragraphs 1-4 of Count I of the Complaint hereinabove.

2. Valley denies each and every allegation made in Paragraph 2 of Count II of the Complaint.

3. Valley denies each and every allegation made in Paragraph 3 of Count II of the Complaint.

4. Valley, for lack of information sufficient to justify a belief, denies the allegations of Paragraph 4 of Count II of the Complaint.

5. Valley denies each and every allegation made in Paragraph 5 of Count II of the Complaint.

6. Valley denies each and every allegation made in Paragraph 6 of Count II of the Complaint.

7. Valley denies each and every allegation made in Paragraph 7 of Count II of the Complaint.

8. Valley denies each and every allegation made in Paragraph 8 of Count II of the Complaint.

9. Valley denies each and every allegation made in Paragraph 9 of Count II of the Complaint.

Valley denies each and every allegation contained in Count II of the Complaint which is not specifically admitted above and denies that Plaintiff is entitled to any relief requested with respect to Count II of the Complaint.

**DEFENDANT'S REQUEST FOR ATTORNEY'S FEES AND COSTS**

Pursuant to ERISA § 502(g), Valley prays that this Court, upon dismissing this Complaint, order Plaintiff to pay Valley's reasonable attorney's fees and costs.

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ONE OF THE COUNSEL FOR DEFENDANT,  
Valley Services, Inc.

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 17th day of February, 2005, caused a copy of the above and foregoing to be served by United States Mail, postage prepaid, upon the following:

Myron Allenstein  
Rose Marie Allenstein  
Allenstein & Allenstein, LLC  
141 South 9th Street  
Gadsden, AL 35902-0487

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